IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2383 OF 2007
[FOR LEAVE TO APPEAL]
IN
CRIMINAL APPEAL NO. OF 2007

The State of Maharashtra. ..Applicant.
Versus
Savitribai Chelaram Banga. ..Respondent.

..

Mrs.A.S.Pai, APP, for the Applicant-State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATE : DECEMBER 07, 2007.

P.C.:

1. The applicant-State of Maharashtra has filed this application for leave to appeal against the judgment and order of acquittal dated 5.4.2007 passed by the learned Special Judge, NDPS Act, Thane in Special Case No.418 of 2005. By the said judgment and order, the learned Special Judge acquitted respondent-accused of the offences punishable under Sections 20 & 22 of the NDPS Act.

2. Heard the learned APP for the applicant-State. Perused the judgment and order of the learned Special Judge and the evidence

which has been produced by the learned APP.

3. It is the prosecution case that an information was received that the respondent had kept Ganja in her house. Pursuant to the said information, raid was carried out and 6.024 kgs. of Ganja came to be found in the premises. It is an admitted fact that prior information was received in relation to Ganja being in the house of the respondent. However, even though there was prior information and raid was carried out after receipt of the prior information, it is seen that there is no compliance of Section 42 of the NDPS Act. It has been held in various decisions of the Supreme Court that Section 42 of NDPS Act is mandatory provision and non-compliance of Section 42 would vitiate the conviction. In the present case, the mandatory provisions of Section 42 were not complied with. Hence, the learned Special Judge has acquitted the respondent-accused on this ground.

4. Looking to material on record, I am of the opinion that the view taken by the learned Special

Judge is a reasonable and possible view.

5. It is well settled that if the view of acquittal could have been reasonably arrived at then mere circumstance that the lower Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair, (2003) 1 SCC 1**. In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in Appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Special Judge is a reasonable and possible view, hence, no interference is called for. Application for leave to appeal is rejected. Consequently, Appeal also stands dismissed.

(SMT.V.K.TAHILRAMANI,J.)